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MY NEMESIS, LLC, a California limited liability corporation

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

PATENT

MY NEMESIS, LLC, a California limited liability corporation, Plaintiff, vs. EDAN USA,INC. a California corporation, and Does 1 to 100. Defendants.	Case No. **COMPLAINT FOR JUDGMENT OF INFRINGEMENT OF PATENT 9,107,597 AND FOR TEMPORARY AND PERMANENT INJUNCTIONS** **DEMAND FOR JURY TRIAL**

MY NEMESIS, LLC, herein after referred as ("MY NEMESIS") a California limited liability corporation, by its undersigned attorney, for its Complaint ("Complaint") against Defendant EDAN USA, INC. herein after referred as ("EDAN") a California corporation, alleges on personal knowledge as to its own acts and on information and belief as to the actions of others, as follows:

THE PARTIES

1. Plaintiff MY NEMESIS, LLC is a limited liability company registered at California and located at 334 Santana Row, Suite 342, San Jose, CA 95128.

2. Upon information and belief the Defendant EDAN USA, INC. is a California corporation which has its principal place of business located at 4204 Jutland Drive Suite B San Diego, CA 92117.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).
4. Upon information and belief, EDAN is subject to personal jurisdiction by this Court. EDAN has committed such purposeful acts and/or transactions in the State of California that it reasonably knew and/or expected that it could be hailed into a California court as a future consequence of such activity. EDAN makes, uses, and/or sells infringing products within the Northern District of California and has a continuing presence and the requisite minimum contacts with the Northern District of California, such that this venue is a fair and reasonable one.
5. Upon information and belief, EDAN has transacted and, at the time of the filing of this Complaint, is continuing to transact business within the Northern District of California.
6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) because a substantial part of the events giving rise to claims occurred in the Northern District of California.

BACKGROUND

7. On August 18, 2015, United States Patent No. 9,107,597 ("the '597 patent") entitled "APPARATUS, DEVICE AND METHOD FOR OBTAINING ELECTROCRDIOGRAM" was duly and legally issued to the inventors Yadon Arad and Alon Konchitsky.

8. The embodiments of the ‘597 patent provide an apparatus containing a device communicably coupled to two electrodes that may be positioned on a body of a subject for obtaining 12 leads or 18 leads electrocardiogram. The two electrodes may obtain signal parameters which may be detected and collected by the device for processing thereof and thus obtain 12 leads or 18 leads electrocardiogram that may be transmitted to a health care provider for seeking health assistance based on the transmitted electrocardiogram. The method for obtaining the electrocardiogram using two electrodes is also provided in the ‘597 patent.

9. My Nemesis, the Plaintiff, herein is a California limited liability corporation has acquired ownership interest of the said ‘597 patent from the inventors/assignors Yadon Arad and Alon Konchitsky and/or their respective successors and assigns. The Plaintiff has acquired the sole ownership of the patent-in-suit and has all rights, title and interest over the ‘597 patent

10. Ownership of a patent gives the patent owner the right to exclude others from making, using, offering for sale, selling, or importing into the United States the invention claimed in the patent. 35 U.S.C. 154(a)(1).

11. Therefore the Plaintiff in this instant action has the right to exclude others from manufacturing, selling and using the product in United States under the U.S. patent 9,107,597 B2 (“the ‘597 patent”, or “patent-in-suit”). A copy of the ‘597 patent is attached hereto as Exhibit A.

12. EDAN, the Defendant herein was formulated in 2009 to offer local service and support for U.S. sales, having two offices and employees located in San Diego, CA. Defendant

sells their equipment through their distribution network that comprises of over 100 resellers across the United States.

13. EDAN's stated goal is to offer high quality diagnostic equipment that improves quality of care to patients, with customer pricing 30% - 40% less than that of major U.S. competitors.

14. One of the products of EDAN sells within the U.S. is Patient Monitor iM80 (sometimes referred to herein as the "infringing product") which is advertised by EDAN to be designed to match the needs for critical care, post anesthesia care and operation room. EDAN's iM80 is advertised to be a monitoring system and having built-in clinical interfaces to provide an all-in-one solution for hospital segments.

15. EDAN's Patient Monitor iM80 incorporates the claim limitations of the '597 patent which describes the infringing apparatus and its functions involving the method of obtaining electrocardiogram.

16. In the Patient Monitor iM80 the *functioning of the monitor which monitors* parameters such as ECG (12-lead selectable); the function of the electrocardiogram (ECG) which measures the electrical activity of the heart and displays it on the monitor; the positioning or placement of the Electrodes for 3-lead; the Connection of the electrode lead to the patient's cable; Connecting ECG Cables and Connection of the electrode lead to the patient's cable comprise infringements of the '597 patent.

17. EDAN's infringements specifically pertain to Claim 1 of the '597 patent. Defendant EDAN uses a copycat approach in manufacturing the Patient Monitor iM80 using the

features and the functions disclosed in the ‘597 patent and reproduced to give an impression as a new product sometimes called “Patient Monitor iM80”.

18. The patent infringement arising from Defendant’s Patient Monitor iM80 is further delineated in a comparative analysis and diagrammatic representation which maps the Defendant’s infringing product to the limitations of claim 1 of the ‘597 patent. (Exhibit B)

19. Plaintiff, My Nemesis, herein by virtue of the ownership granted by the inventors (and/or the inventor’s successors and assigns) of the ‘597 patent, claims damages for infringement for the reason that the Defendant has not acquired any consent/license/assignment/ownership of the ‘597 patent.

20. The infringing product monitors parameters such as ECG (3-lead, 5-lead, 12-lead selectable), Respiration (RESP), Functional arterial oxygen saturation (SpO2), Invasive or noninvasive blood pressure (2/4 channels IBP NIBP), Cardiac Output (C.O.), Temperature (dual-TEMP), Expired CO2 and Anesthetic gas (AG).

21. The Defendant’s monitor is equipped with alarms that indicate system faults (such as loose or defective electrodes), physiologic parameters that have exceeded the limits set by the operator, or both.

22. Plaintiff’s invention is an apparatus for performing one of 12 leads and 18 leads electrocardiogram on a body of a subject, the apparatus having two electrodes, each of the two electrodes being adjustable on the body to record one or more signal parameters at one or more locations on the body.

23. Plaintiff alleges that Defendant's product infringes upon Plaintiff's patent when, *inter alia*, the monitor is set in 3-lead configuration, two electrodes are used, that are adjustable on the body to measure body signal parameters at different body locations. The electrodes are not part of the iM80 monitor but are a necessary accessory used to complete the functions of the Defendant's infringing product. (Exhibit B).

24. The infringing product has a sensor port and has connectors to connect electrode probes and couples to electrodes and collects body signal parameters for determining 12 lead ECG (electrocardiogram). This is an infringement of a limitation of claim 1, to wit, being "a device capable of being communicably coupled to the electrodes, the device configured to detect and collect the one or more recorded signal parameters for processing thereof and thereby determining one of 12 leads and 18 leads electrocardiogram"...(Exhibit B).

25. Further, plaintiff alleges that the infringing product uses at least one reference electrode, uses a processor module and uses or needs a sensor module to function as described in claim 1in the '597 patent. In the infringing product, the measured body signal parameters are processed to generate the ECG and display it on the monitor.

26. Claim 4 of the '597 Patent-In-Suit is a method wherein the collected signal parameters are processed prior to transmitting the determined electrocardiogram to a monitoring station. Thus, Plaintiff further alleges infringement of claim 4.

CAUSE OF ACTION

(Claim for Patent Infringement against EDAN)

27. Plaintiff hereby restates and re-alleges the allegations set forth in the above paragraphs and incorporates them by reference.

28. My Nemesis is the owner of the Patent-in-Suit with the exclusive right to enforce the Patent-in-Suit against infringers, and collect damages for all relevant times, including the right to prosecute this action.

29. Upon information and belief, EDAN is liable under 35 U.S.C. §271(a) for direct infringement of the Patent-in-Suit because it manufactures, makes, has made, uses, practices, provides, supplies, distributes, sells, and/or offers for sale products and/or systems that practice one or more claims of the Patent-in-Suit.

30. The Patient Monitor iM80 that Defendant manufactures in the United States, and distributes, offers to sell and sells within the United States through its distribution network incorporates the apparatus, device and method for obtaining electrocardiogram that are described by one or more claims of the ‘597 patent.

31. Defendant offers to sell, sells , and distributions within the United States the Patient Monitor iM80 containing electronic circuits covered by one or more claims of the ‘597 patent thus constitutes infringement of the '597 patent in violation of 35 U.S.C. § 271(a).

32. Defendant has profited through infringement of the '597 patent. As a result of Defendant's unlawful infringement of the '597 patent, Plaintiff has suffered damages in an amount yet to determine and will continue to suffer damages in future.

33. Upon information and belief, Defendant EDAN intends to continue its unlawful infringing activity and Plaintiff unless Defendant EDAN is enjoined by this Court.

34. Defendant's acts of infringement have caused irreparable harm to Plaintiff and Plaintiff will continue to suffer such irreparable harm unless Defendant is preliminarily and permanently enjoined by this Court.

35. MY NEMESIS has been damaged as a result of EDAN's infringing conduct. EDAN is thus liable to MY NEMESIS in an amount that adequately compensates MY NEMESIS for EDAN's infringement, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

PRAYER FOR RELIEF

WHEREFORE, MY NEMESIS requests that the Court enter judgment in its favor and against EDAN on its Complaint with prejudice as follows:

A. That EDAN be held to have infringed upon the '597 patent.

B. That a temporary and permanent injunction be granted pursuant to 35 U.S.C. § 283, enjoining EDAN, and each of its agents, servants, employees, principals, officers, attorneys, successors, assignees, and all those in active concert or participation with EDAN, including related individuals and entities, customers, representatives, OEMs, dealers, and distributors from further acts of (1) infringement, (2) contributory infringement, and (3) active inducement to infringe with respect to the claims of the ‘597 patent .

C. That EDAN, its subsidiaries, affiliates, parents, successors, assigns, officers, agents, servants, employees, attorneys, and all persons acting in concert or in participation with them, or any of them, be temporarily and preliminarily enjoined during the pendency of this action, and permanently enjoined thereafter from infringing, contributing to the infringement of, and inducing infringement of the ‘597 patent, and specifically from directly or indirectly making, using, selling, or offering for sale, any products or services embodying the inventions of the ‘597 patent during the life of the claims of the ‘597 patent, without the express written authority of My Nemesis.

D. That EDAN be directed to fully compensate My Nemesis for all damages attributable to EDAN’s infringement of the ‘597 patent in an amount according to proof at trial.

E. That this case be deemed exceptional.

F. That all damages awarded be trebled.

G. That EDAN be ordered to deliver to MY NEMESIS, for destruction at My Nemesis’s option, all products that infringe the ‘597 patent.

H. That EDAN be required to account for all gains, profits, advantages, and unjust enrichment derived from its violation of law.

I. That MY NEMESIS, be awarded reasonable attorney’s fees.

J. That MY NEMESIS, be awarded the costs of suit and an assessment of interest.

K. That MY NEMESIS have such other, further and different relief as the Court deems proper.

DATED: April 6, 2017

By /s/ Steven A. Nielsen
Steven A. Nielsen
Attorneys for Plaintiff

MY NEMESIS, LLC, a California limited liability company

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), MY NEMESIS, LLC demands a trial by jury of all issues triable of right by jury.

By /s/ Steven A. Nielsen
Steven A. Nielsen

Attorneys for Plaintiff

MY NEMESIS, LLC, a California limited liability company